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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF ARIZONA**

17 WILDEARTH GUARDIANS,

18 Plaintiff,

19 v.

20 UNITED STATES FISH AND
21 WILDLIFE SERVICE and UNITED
22 STATES FOREST SERVICE,

23 Defendants.

CASE NO. 4:13-cv-151-RCC

**DEFENDANTS' MOTION TO DISSOLVE
THE COURT'S INJUNCTION RE THE
GILA, LINCOLN, CARSON, SANTA FE,
TONTO NATIONAL FORESTS**

[EXPEDITED REVIEW REQUESTED]

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INTRODUCTION

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2 At issue is whether the U.S. Fish & Wildlife Service’s (“FWS”) completion of its
3 reinitiated Section 7(a)(2) consultation under the Endangered Species Act (“ESA”)
4 regarding the forest plans for the Gila, Carson, Lincoln, Santa Fe, and Tonto National
5 Forests and its issuance of a superseding biological opinions (“BiOps”) for these National
6 Forests satisfies this Court’s prior order, dated September 12, 2019, and warrants
7 dissolution of the Court’s injunction insofar as it applies to these five National Forests. In
8 its order, the Court ordered FWS to reinitiate consultation with the U.S. Forest Service
9 (“USFS”) and revisit the recovery determination in the Section 7(a)(2) jeopardy analysis
10 for the Gila, Carson, Lincoln, Santa Fe, and Tonto BiOps. ECF No. 89 at 36-39.¹ The
11 Court also enjoined all timber management actions on these National Forests until the
12 completion of reinitiated consultation and issuance of superseding BiOps. *Id.* Both events
13 have now occurred. Accordingly, because Defendants have fully complied with this
14 Court’s order, its injunction should, by its terms, be dissolved.

STANDARD FOR DISSOLUTION

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16 A party seeking dissolution of an injunction may meet its initial burden by
17 demonstrating “a significant change either in factual conditions or in law.” *Rufo v.*
18 *Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 384 (1992); *see also Sharp v. Weston*, 233
19 F.3d 1166, 1170 (9th Cir. 2000) (“A party seeking modification or dissolution of an
20 injunction bears the burden of establishing that a significant change in facts or law
21 warrants revision or dissolution of the injunction”); *Univ. of Hawaii Prof’l Assembly v.*
22 *Cayetano*, 125 F. Supp. 2d 1237, 1240 (D. Haw. 2000) (“[C]ourts have continuing
23 jurisdiction to terminate, dissolve, vacate, or modify an injunction or an interlocutory
24 order in the event that changed circumstances require it.”) (citing *United States v.*
25 *Oregon*, 769 F.2d 1410, 1416 (9th Cir. 1985), and *In re Detroit Auto Dealers Ass’n*, 84
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27 ¹ Citations to Court documents reference the page numbers generated by ECF.
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1 F.3d 787, 789 (6th Cir. 1996)). “A significant change is one that pertains to the
2 underlying reasons for the injunction.” *Moon v. GMAC Mortgage Corp.*, No. C08-969Z,
3 2008 WL 4741492, at *2 (W.D. Wash. Oct. 24, 2008) (citing *United States v. Swift &*
4 *Co.*, 189 F. Supp. 885, 905 (D. Ill. 1960), *aff’d per curiam*, 367 U.S. 909 (1961)). Under
5 a flexible standard based on Federal Rule of Civil Procedure 60(b)(5), “the Ninth Circuit
6 has directed courts to ‘take all the circumstances into account in determining whether to
7 modify or vacate a prior injunction or consent decree.’” *Orantes-Hernandez v. Gonzales*,
8 504 F. Supp. 2d 825, 830 (C.D. Cal. 2007), *aff’d*, 321 F. App’x 625 (9th Cir. 2009)
9 (quoting *Bellevue Manor Assocs. v. United States*, 165 F.3d 1249, 1256 (9th Cir. 1999));
10 *see also System Fed’n No. 91 v. Wright*, 364 U.S. 642, 648 (1961) (holding district court
11 has “wide discretion” to modify injunctive relief upon changed circumstances or new
12 facts).

13 ARGUMENT

14 **I. Defendants Have Complied With This Court’s Order Insofar As It Applies to** 15 **the Gila, Carson, Lincoln, Santa Fe, and Tonto National Forests, and the** 16 **Injunction Should Be Dissolved.**

17 In its order dated September 12, 2019, this Court enjoined USFS’s timber
18 management activities in the Gila, Carson, Lincoln, Santa Fe, and Tonto National Forests
19 pending the following: (1) the completion of reinitiated Section 7(a)(2) consultation and
20 (2) the issuance of a new superseding BiOps. ECF No. 89 at 36-39. Both events have
21 now occurred. The circumstances that originally necessitated injunctive relief are no
22 longer present. Rather, the agencies’ completion of their reinitiated consultation and
23 FWS’s new superseding BiOps – in compliance with this Court’s order – constitute
24 “significant changes” that directly address “the underlying reasons for the injunction.”
25 *Moon*, 2008 WL 4741492 at *2. Accordingly, Defendants have fully complied with the
26 terms of the Court’s order, and the Court’s injunction against the agencies should be
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1 dissolved.² The injunction is no longer warranted and should be dissolved.

2 **CONCLUSION**

3 For all these reasons set forth above, Defendants' motion for dissolution of the
4 injunction should be granted.

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6 Dated: December 27, 2019

Respectfully Submitted,

7 JEAN E. WILLIAMS,
8 Deputy Assistant Attorney General
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10 S. JAY GOVINDAN,
Assistant Section Chief

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25 ² To the extent that Plaintiff intends to challenge the substance of these superseding BiOps, these
26 BiOps are new final agency action that must be challenged in a separate complaint based on
27 their own administrative records and subject to the appropriate notice requirements and
28 standard of review.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

WILDEARTH GUARDIANS,

Plaintiff,

v.

UNITED STATES FISH AND
WILDLIFE SERVICE and UNITED
STATES FOREST SERVICE,

Defendants.

CASE NO. 4:13-cv-151-RCC

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Rickey D. Turner, Jr.
RICKEY D. TURNER, JR.